SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

Date: 02/19/2010 Time: 01:07:00 PM Dept: 53

Judicial Officer Presiding: Loren E McMaster
Clerk: T. West
Reporter/ERM:
Bailiff/Court Attendant:

Case No: **34-2010-00070005-CU-MC-GDS** Case Init. Date: 02/05/2010
Case Title: **Sacramento County Deputy Sheriffs Association vs. County of Sacramento**

Case Category: Civil - Unlimited

APPEARANCES

SCDSA v. County of Sacramento, No. 34-2010-00070005

Court ruling on ex parte request for a Temporary Restraining Order (TRO)

The ex parte request for a TRO is denied. Nevertheless the Court will issue an OSC re Preliminary Injunction on the terms set forth by Plaintiff in the proposed order (absent the TRO).

The Court finds that the SCDSA has standing to be a Plaintiff in this action. The County now interprets Penal Code section 4019 to apply to county jail inmates, so more inmates are being released at the same time that the Sheriff's office has lost over 120 deputies due to layoff. That results in changed circumstances that could potentially put the deputies in the field more at risk than they would be without the early release of inmates. This state of affairs is sufficient to create standing.

The Court granted a TRO in this matter previously. The Court thereafter concluded that Sacramento County jail inmates were Real Parties in Interest in this litigation, but had not been served with the ex parte papers or otherwise given notice of the ex parte proceeding. Since the relief requested in the complaint directly affects the rights and status of the County Jail inmates, they were entitled to notice and hearing. Since that had not occurred, the Court had no choice but to vacate the TRO, since to keep it in effect would deny the county jail inmates procedural due process protected by both the California and United States Constitutions. The Court ordered that the Public Defender or any other counsel representing affected inmates be joined in this proceeding and given the right to file papers and appear at any hearing. The vacating of the TRO was without prejudice to Plaintiff again seeking a temporary restraining order, as it has done.

Since the Court invited his participation in this action, the Public Defender's motion to intervene is granted.

The Court has reviewed and considered the Plaintiff's First Amended Complaint, renewed ex parte application, points and authorities, declarations re notice and proofs of service; the memorandum and declaration filed by the Public Defender; the oppositions and declaration filed by the County of Sacramento; and the amicus brief submitted by the District Attorney. The Court has also considered the

arguments at the hearing on behalf of the above parties as well as the arguments on behalf of the California Victim Rights group.

In deciding whether to issue a TRO and/or preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance of the injunction. The greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. *Butt v. State of California* (1992) 4 Cal.4th 668, 677-678. A preliminary injunction may not be granted, regardless of the balance of interim harm, unless it is reasonably probable that the moving party will prevail on the merits. *San Francisco Newspaper* Printing Co. v. Superior Court (1985) 170 Cal. App. 3d 438, 442.

The Court concludes that the moving party has **not** shown that it is "reasonably probable" that it will succeed on the merits.

This case turns on the meaning of the 2009 amendments to Penal Code section 4019. Plaintiff contends that these amendments (1) do not apply to county jail inmates and (2) and if they do, they are unconstitutional. The Court disagrees.

The Sheriff, acting on the advice of County Counsel, has determined that those amendments apply to Sacramento County jail inmates and has applied the credits provided in that section towards county jail inmates' terms. For some period of time, the sheriff was applying the new credit provisions retroactively. The sheriff is now applying the new credit provisions only to time in custody on or after the effective date of the new provision, January 25, 2010. (Decl. of Mark Isawa.) Whether the amendments to section 4019 apply retroactively therefore is not a judiciable controversy before this court. Both the plaintiff and the County have requested that the Court take judicial notice of a bulletin issued by the Attorney General regarding the retroactivity of the amendments to section 4019. Since retroactivity is not an issue before the court, the Attorney General's bulletin is not relevant to these proceedings and has not been considered.

The Court, having the benefit of its own legal research, and the additional memoranda submitted by the District Attorney and the Public Defender in the time period since the issuance of the TRO, now concludes that the 2009 amendments to section 4019 **do apply** to county jail inmates and are not unconstitutional.

In reviewing the amended version of section 4019 and its previous versions, it appears to the Court that the section has always applied to jail terms. A review of its history discloses that section 4019 did not apply to persons sentenced to state prison for a time until the California Supreme Court found that denying these credits to state prisoners violated equal protection. (*People v. Sage* (1980) 26 Cal.3d 498.) The new legislation amends section 4019 in its entirety. It does not limit the new credit provisions to persons sentenced to state prison.

Plaintiff suggests that, although "prisoner" included county jail inmates in the previous version of section 4019, its use in the 2009 amendments to section 4019 is particular to state inmates. This interpretation is contrary to the law on the effect of statutory amendments as set forth in Government Code section 9605 and the legislative history of the amendments to section 4019. Government Code section 9605 expressly states:

"Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment..."

Examining the legislative history, the Court notes that the Legislative Counsel's digest states that the 2009 amendments applies to prisoners committed to county jail, stating the following: "This bill would

also revise the time credits for certain prisoners confined or committed to a county jail or other specified facilities, as provided." This was also mentioned in the Senate Floor Analysis of the bill. The Legislative Counsel's digest does not state that its purpose is limited to reducing the state prison population to comply with the federal court orders.

Plaintiff next claims that amending the conduct credits provisions in section 4019 violates various provisions of Proposition 9 that modified Article I, section 28 of the California Constitution ("Marcy's Law"). Plaintiff first suggests that it violates victims' rights to notice "upon request" of "the scheduled release date of the defendant." Section 28(a)(12) provides as follows:

(12)To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

Nothing in the amendment to section 4019 alters the victims' rights to notice or the sheriff's obligation to provide that notice.

Plaintiff also contends that the application of the new provisions violates victims' "rights to be heard" under Marcy's law, California Constitution, article I, § 28(b)(8). This provision provides for a state constitutional right of a victim:

"To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post conviction release decision, or any proceeding in which a right of the victim is at issue."

Nothing in the new law affects victims' rights to be heard at "any proceeding." The sheriff's decision to release inmates based on a statutory credit calculation is not a "proceeding". This provision is not violated.

Nor do the amendments to section 4019 run afoul of the "Truth in Sentencing" provision of Marcy's law. That provision is set forth in California Constitution article I, § 28(f)(5), which provides as follows:

"Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce their sentences."

This provision requires that sentences be carried out in compliance with the courts' sentencing orders. The sheriff's application of the new credit provisions to jail inmates does not violate courts' sentencing orders. Under the previous version of section 4019, if an inmate earned all of the conduct credits provided therein, the sheriff had the authority and was required to release inmates after they served approximately two-thirds of their terms. That the sheriff had the power to do this under section 4019 was unquestioned. The sheriff's exercise of this statutory power did not alter courts' sentencing orders. Sentencing orders do not address post-sentence credits. Those are in the power of the sheriff to decide. (See Pen. Code, § 2900.5 (a), (d), (e);see also *People v. Duesler* (1988) 203 Cal.App.3d 273, 276.) The Sheriff's application of credits based on the new law also does not alter courts' sentencing orders. The only difference in the new law is that the Sheriff is required to release inmates who qualify for the credits after serving about half of their terms. If the sheriff's action of granting post-sentence credits under the previous version of section 4019 did not violate Marcy's law, which it did not, calculating credits under the new provision does not either.

That the "Truth in Sentencing" provision did not alter the sheriff's power to apply credits under section 4019 is clear from the last sentence of that provision, which states: "The legislative branch shall ensure

sufficient funding to adequately house inmates for the full terms of their sentences, *except for statutorily* authorized credits which reduce their sentences." (Emphasis added.) Hence, Marcy's law does not prevent release of inmates based on "statutorily authorized credits which reduce their sentences."

Plaintiff suggests that the new provision violates Marcy's "Truth in Sentencing" provision because it falls within the prohibition for "early release policies intended to alleviate overcrowding in custodial facilities." Plaintiff also claims that the reference to "statutorily authorized credits" applied to the repealed version of section 4019 and not to the new version. This is not what the "Truth in Sentencing" provision states. It states the "sentences ... shall be carried out in compliance with the courts' sentencing orders" and that such sentencing orders "shall not be substantially diminished by early release policies intended to alleviate overcrowding..." Applying a legislatively enacted amendment to the credit provisions in section 4019 is not an "early release policy" that alter courts' sentencing orders.

Plaintiff last argues that the amendment to section 4019 violates the portion of Marcy's law declaring that crime victims have "the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer." There is nothing in the record before this Court to show that the enactment of the amendment to section 4019 violates this broad right to have the criminal justice system properly funded.

In issuing the TRO last week, the Court in part relied upon the declaration of one of the authors of the legislative enactment, Assembly Majority leader Alberto Torrico, that stated that it was never the intent of those drafting the amendment to Penal Code § 4019 to apply the time credits to county jail inmates. Such reliance was improper since statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation. *American Financial Services Assn. v. City of* Oakland (2005) 34 Cal. 4th 1239, 1262.

As stated in its initial ruling, the Court does have concerns regarding public safety when county jail inmates are being released early due to the application of increased conduct credits mandated by the Legislature at the same time that Deputy Sheriffs are being laid off. It is a formula for disaster. However, notwithstanding the Court's views on the balance of hardships, the Court cannot rely on such to issue a TRO unless the party showing the greater hardship **establishes a likelihood of prevailing on the** merits. *San Francisco Newspaper Printing Co. v. Superior Court*, supra, 170 Cal. App. 3d at 442. The Court cannot find that the plaintiff established such in view of the language of section 4019 discussed above. The Court has a duty to enforce all statutes, including section 4019 as amended, whether or not it agrees with the wisdom of such. The proper forum to further amend section 4019 is in the Legislature.

If the date for hearing selected by the Court for the hearing on the OSC re preliminary injunction (March 3, 2010) is not convenient for the parties, they shall meet and confer to recommend a new date to the Court as well as a briefing schedule. If the March 3, 2010 date is convenient to the parties, they shall meet and confer and agree on a briefing schedule.

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Declaration of Mailing
I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to Plaintiff in the U.S. Mail at 720 Ninth Street, Sacramento, California.
Dated: February 19, 2010
T. West, Deputy Clerk ____***s/ T. West***_____

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